



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes (MNDC), MNSD, FF

Introduction

This matter dealt with an application by the Tenant for the return of a security deposit, for compensation for the Landlord's failure to return the deposit with the time limits required under the Act and to recover the filing fee for this proceeding. The Landlord applied to recover the filing fee for this proceeding and to keep part of the Tenant's security deposit.

The Landlord's application did not contain a claim for compensation for damage or loss under the Act, however, in the details portion of her application, she indicated that she wished to recover compensation for cleaning and advertising expenses. Consequently, I find that the Landlord's application should be amended to include a claim for compensation for damage or loss.

The Tenant said he served the Landlord by regular mail on October 7, 2009 with a copy of the Application and Notice of Hearing in this matter. Section 89 of the Act requires that the hearing package be served in person or by registered mail. The Landlord confirmed that she received the hearing package and in the circumstances I find pursuant to s. 71(2)(c) of the Act that the Tenant's hearing package was sufficiently served for the purposes of the Act.

Issues(s) to be Decided

1. Is the Landlord entitled to compensation and if so, how much?
2. Is the Tenant entitled to the return of his security deposit and if so, how much?

Background and Evidence

This fixed term tenancy started on April 9, 2009 and was to expire on September 30, 2009. The Tenant says the tenancy ended on or about June 7, 2009 when he returned his keys to the Landlord. The Landlord says the tenancy ended on or about June 4, 2009 when the Tenant returned his keys. Rent was \$550.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$225.00 at the beginning of the tenancy.

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The Tenant said he gave his forwarding address in writing to the Landlord on May 29, 2009 when he also gave her his one month written notice that he was ending the tenancy. The Landlord said the Tenant did not give her his forwarding address in writing until July 7, 2009 when she received his application in this matter. The Parties agree that on July 12, 2009, the Landlord mailed a letter to the Tenant with a cheque for \$126.30 representing the balance of the security deposit after deducting amounts for advertising and cleaning. The Tenant said he did not authorize the Landlord to deduct these amounts.

The Landlord argued that she incurred advertising expenses in order to re-rent the rental unit for the unexpired term of the tenancy. The Landlord claimed that she did not always advertise for new tenants because some were referred to her. The Landlord said the rental unit was not re-rented until July 1, 2009.

In his notice ending the tenancy, the Tenant claimed that the Landlord failed to address his concerns about smoking in the rental property, pets, parking and laundry facilities. The Landlord claimed that the Tenant never previously brought these matters to her attention. The Tenant said that he did bring these matters to the Landlord's attention but admitted it was not in writing. The Tenant's forwarding address is not indicated on the Notice ending the tenancy.

The Landlord claimed that she did not complete a move out condition inspection report at the end of the tenancy because she thought the Tenant would be moving out at the end of the month but he moved out earlier. The Landlord also claimed that when the Tenant dropped off the keys, he left right away without saying anything. The Tenant claimed that after he cleaned the rental unit on June 7, 2009, he did a brief walk through of the rental unit with the Landlord while his uncle was present.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date she receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

I find that the Landlord received the Tenant's forwarding address in writing on July 7, 2009 but only returned \$126.30 of it on July 12, 2009 and did not have the Tenant's written authorization to keep the amount of \$98.70. I also find that the Landlord did not

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apply for dispute resolution to keep \$98.70 of the security deposit until October 5, 2009. Consequently, I find that the Landlord must return double the amount of the unreturned portion of the security deposit to the Tenant. As the Tenant has been successful in this matter, I also find that he is entitled to recover his \$50.00 filing fee for this proceeding plus his service fees of \$4.41.

Section 35 of the Act says that a Landlord must complete a condition inspection report at the end of the tenancy even if the Tenant does not participate. I find that the Landlord had an opportunity to schedule a condition inspection with the Tenant when he returned his keys but she failed to do so. Section 37 of the Act says that a tenant must leave a rental unit reasonably clean and undamaged at the end of a tenancy. I find that there is insufficient evidence that the rental unit was not reasonably clean at the end of the tenancy and as a result, the Landlord's claim for cleaning expenses is dismissed.

I am also not satisfied that the Landlord incurred advertising expenses solely because the Tenant ended the tenancy early. In other words, the Landlord admitted that she might have had to advertise the rental unit even if the Tenant ended the tenancy at the end of the fixed term. In the circumstances, I award the Landlord one-half of the advertising expenses or \$34.35. As the Landlord has only been partially successful in her application, I find that she is entitled to recover one-half of the filing fee or \$25.00 and one-half of her service expenses or \$6.30.

In failing to complete the condition inspection report when the Tenant moved out, I find the Landlord contravened s. 35(3) of the Act. Consequently, s. 36(2)(c) of the Act says that the Landlord's right to claim against the security deposit for damages is extinguished. I find however, that sections 38(4), 62 and 72 of the Act when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlord to keep \$65.65 from the Tenant's security deposit and to return the balance to the Tenant as follows:

Double unreturned deposit:	\$197.40
Filing fee:	\$50.00
Service fees:	<u>\$4.41</u>
Subtotal:	\$251.81
Less: Landlord's award:	<u>(\$65.65)</u>
Balance owing:	\$186.16



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Conclusion

A monetary order in the amount of **\$186.16** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 21, 2009.

Dispute Resolution Officer